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June 20, 1996

MM 97-122

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

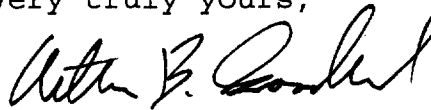
Re: Application for consent for assignment of the licenses
for FM translator stations W276AQ, Ft. Lee, New Jersey
and W232AL, Pomona, New York (File Nos. BALFT-950531TW
and BALFT-950531TX)

Dear Mr. Caton:

Transmitted herewith, on behalf of Gerard A. Turro, are an original and four copies of his "Opposition to Petition to Deny," submitted with respect to the petition to deny the above-captioned applications filed June 7, 1996 by Universal Broadcasting of New York, Inc.

In the event you have any questions regarding this matter, please contact me.

Very truly yours,


Arthur B. Goodkind

Enclosure

cc (w/enc.): Richard A. Helmick, Esq.
Roy J. Stewart, Esq.
Norman Goldstein, Esq.
Stephen Barone
Charles W. Kelley, Esq.

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DOCKET FILE COPY ORIGINAL JUN 20 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re the Application of)

GERARD A. TURRO)
FM Translator Stations W276AQ,)
Fort Lee, NJ, and W232AL,)
Pomona, NY)

For Assignment of Licenses)

To: Chief, Mass Media Bureau)

MM 97-122
File Nos. BALFT-950531TW
BALFT-950531TX

OPPOSITION TO PETITION TO DENY

Gerard A. Turro ("Mr. Turro"), by his attorneys, files herewith his opposition to the Petition to Deny the above-captioned applications filed June 7, 1996 by Universal Broadcasting of New York, Inc. ("Universal").¹

Universal's petition must be dismissed. It consists of a series of unverified allegations which clearly fail to meet the requirements of Section 309(d)(1) of the Communications Act, 47 U.S.C. §309(d)(1). Even if considered as an informal objection,

¹On June 17, 1996, the Commission's staff denied Mr. Turro's motion for an extension of time to respond to Universal's petition. Mr. Turro had requested that the date for his opposition be extended until after the July 10 cut-off date for petitions to deny the above-captioned applications. Given these circumstances, we request that the Commission adhere strictly to Section 1.45(b) of the Rules, which requires that replies be limited to matters raised in oppositions, and that Universal not be permitted to file what would substantively be a second petition to deny either as a reply to Mr. Turro's opposition or in any other form.

Universal's filing presents no reason why Mr. Turro's assignment applications should be denied or designated for hearing.²

Universal's petition first repeats allegations Universal has previously made that Mr. Turro's translators have not rebroadcast WJUX in Monticello, but have instead been fed directly by Mr. Turro's network program source. Mr. Turro has responded to these allegations in his letter to Norman Goldstein dated July 27, 1995, and the Commission has itself inspected both WJUX and Mr. Turro's translators. Since Universal's present filing presents nothing new with respect to this matter, we shall not respond further here.

Second, Universal contends that the application should be denied because the non-entertainment programming broadcast by WJUX and relayed by the translators is solely directed to the needs of Bergen County, New Jersey, and not to the service area of WJUX itself. This allegation is simply incorrect. As set forth in Mr. Turro's Declaration which is Attachment A hereto, the programming broadcast by WJUX and relayed by the translators includes a number of programs dealing explicitly with the issues and interests of Monticello and of Sullivan County, New York, in which Monticello is located. Much of the other programming broadcast by WJUX is of interest to listeners in both New York

²Pursuant to Section 309(e) of the Act, Mr. Turro's assignment applications may not be denied without affording Mr. Turro a right to a full evidentiary hearing.

and New Jersey. WJUX also broadcasts advertising for clients in Monticello and its immediate area.

Finally, Universal questions the bona fides of the proposed trust, arguing that Stephen M. Gansler, the proposed trustee, would not be an independent person. This unsupported allegation is also wrong, as demonstrated by the Attached Declarations of Mr. Turro and Mr. Gansler, Attachments A and B hereto.

Mr. Gansler is a licensed attorney. He does not presently practice law but is instead Vice President, Human Resources, for Johnson & Johnson Health Care Systems Inc. at its Piscataway, New Jersey location. Mr. Gansler has no business or family connection with Mr. Turro, although Mr. Turro has known Mr. Gansler for a number of years. Indeed, Mr. Gansler was selected as Mr. Turro's Trustee because Mr. Turro knew Mr. Gansler to be a person of independence, character and integrity, who would strictly observe the insulation requirements of the trust agreement submitted with the assignment applications. See Attachments A and B hereto.

The purpose of the trust is to insulate Mr. Turro from any attributable interest in the translators. To that end, Article XIX of the trust agreement provides:

During the term of the trust, the trustee(s) shall not communicate with Grantor or anyone acting on behalf of Grantor with respect to the operation of the translators. The trustee(s) may, without communicating with or notice to Grantor or anyone acting on his behalf, change the mode of operation of the translators

in any way compliant with the then current rules and regulations of the FCC, including the identify of the primary station being translated.

Article XIX also provides for modification of the trust if required to meet FCC requirements. In this regard, Article XIX states:

This trust is intended to comply with all existing and future requirements of the FCC and/or any other governmental or quasi-governmental body charged with the regulation of radio transmissions, so as to ensure the lawful operation of the translators. The provisions of this instrument shall be construed in accordance with that stated intention. Should any provision of this instrument be inconsistent or in conflict with any applicable requirement of the FCC and/or any other governmental or quasi-governmental body charged with the regulation of radio transmissions as they relate to this stated intention, then such requirement shall be deemed to override and supersede the inconsistent or conflicting provision. Any required provision that is omitted from this instrument as it relates to this stated intention, shall be incorporated herein by reference and shall apply retroactively, if necessary, and be deemed to be a part of this instrument to the same extent as though expressly set forth herein. Solely for the purpose of complying with the stated intention, the Grantor specifically empowers the trustee to amend this instrument during the Term or any subsequent Term in any required manner, and, if necessary, any such amendment shall apply retroactively to the inception of the trust.

In their attached declarations, both Mr. Turro and Mr. Gansler reaffirm their intention to comply fully with these trust provisions. Indeed, Mr. Turro is willing to seek a different trustee should the Commission deem that to be required, and will use his best efforts to accommodate all other suggestions the Commission may make for modification of the trust instrument. We

emphasize that the purpose of the trust is to insulate Mr. Turro from any participation in the operation of the translator stations. In that regard, the trustee may, if he concludes that doing so would be in the public interest, either continue the present service offered by the translators or conclude that some other station or stations should be rebroadcast.

The public interest should control resolution of this case. The translators that are the subject of these applications presently provide a program service highly desired by many thousands of New York and New Jersey residents. The translators do not cause interference to Universal's station. Their service is opposed only by Universal, a competitor that has not been successful in the marketplace and that has therefore sought to enlist the services of the United States government to put Mr. Turro out of business.

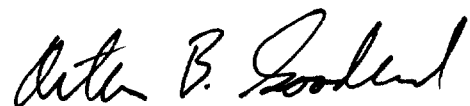
There is no basis for the relief Universal seeks. The pending assignment application represents a good faith effort on Mr. Turro's part to resolve the issues raised by the Commission in its letter of April 5, a letter that rescinded authority apparently granted to Mr. Turro by the Commission's 1991 letter upon which Mr. Turro had relied in developing his present operating arrangements. See Mr. Turro's attached Declaration. Should the Commission be of the view that the proposed trust arrangement requires modification in order to achieve compliance with FCC rules and policies, Mr. Turro will attempt to accomplish

such modifications. The Commission should not, however, act so as to destroy a program service relied upon by many thousands of listeners when there would be no public interest benefit in doing so.

Respectfully submitted

GERARD A. TURRO

By


Arthur B. Goodkind
KOTEEN & NAFTALIN, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036

June 20, 1996

CERTIFICATE OF SERVICE

I, Phillis Merriett, a secretary in the law offices of Koteen & Naftalin, hereby certify that true copies of the foregoing "Opposition to Petition to Deny" have been served upon the following via first-class, postage prepaid, United States mail, this 20th day of June 1996:

Richard A. Helmick, Esq.
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573

Roy J. Stewart, Esq.*
Chief, Mass Media Bureau
Federal Communications
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1919 M Street, N.W.
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Norman Goldstein, Esq.*
Chief, Complaints and
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Stephen Barone*
Complaints and Investigations
Branch
Federal Communications Commission
2025 M Street
Room 8210
Washington, DC 20554

Charles W. Kelley, Esq.*
Complaints and Investigations
Branch
Federal Communications Commission
2025 M Street
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Washington, D.C. 20554


Phillis Merriett

*By hand delivery

Attachment A

DECLARATION OF GERARD A. TURRO

I am the licensee of FM translator stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York. Since early 1995, both translators have rebroadcast the signal of WJUX, Monticello, New York -- W232AL directly and W276AQ by rebroadcasting W232AL. WJUX, in turn, has broadcast programming provided under an affiliation agreement with my programming service. From October, 1994 to January, 1995, WJUX was rebroadcast directly by W276AQ, and W232AL was used to rebroadcast a different station. For several years prior to October, 1994, the Fort Lee translator rebroadcast a non-commercial station that utilized the main elements of the programming service that I developed.

The present method of operation was developed specifically in reliance on a letter received from the Commission dated November 19, 1991, a copy of which was supplied to the Commission with my letter to Norman Goldstein dated July 27, 1995. I believed, and still believe, that our operations were in full compliance with the terms of that letter.

The program service currently provided by the translators is relied upon and enjoyed by tens of thousands of listeners. My program service itself provides employment to 35 people, all of whom would lose their jobs if we are forced to suspend operations. In reliance on the authority apparently provided by the FCC's 1991 letter, I mortgaged my own house to obtain some of the funds necessary to develop my program service. I will probably lose my house and be forced into bankruptcy if I am required to shut the service down.

The Commission's recent letter dated April 5, 1996 has "rescinded" the authority granted by its 1991 letter. In a good faith effort to comply with the new requirements set forth in the Commission's April 5 letter, I have proposed to assign the licenses for the Fort Lee and Pomona translator stations to a trust over which I would have no control.

The trustee proposed for the trust is Stephen M. Gansler. I have no familial or business relationship with Mr. Gansler, although I have known him for many years. Mr. Gansler is a licensed attorney, who is currently employed as a Human Resources

Vice President for Johnson and Johnson. I proposed him as trustee because I know him to be a person of character and integrity who will discharge his trustee functions with the absolute independence I have been advised the FCC's rules and policies require.

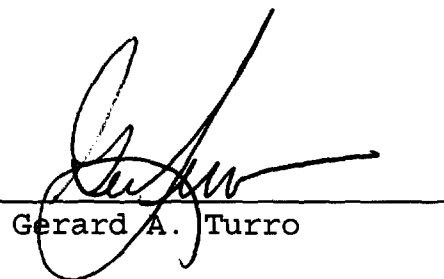
The trust agreement prohibits any communications between me and Mr. Gansler regarding operation of the translators and provides Mr. Gansler with the sole authority to decide which station or stations the translators will rebroadcast. I hereby reaffirm that I will comply fully with those trust provisions. I will also do my best to implement any changes the FCC finds necessary in the trust agreement.

I wish also to respond to the allegation that all of the programming relayed from WJUX by the translators is concerned solely with the needs and interests of Bergen County, New Jersey. That is not correct. Programs broadcast by WJUX and rebroadcast by the translators that deal specifically with the issues and interests of Monticello, New York and Sullivan County, New York, in which Monticello is located, include "Open Mike," a 75 minute program dealing with Sullivan County issues that is produced in

the studios of WJUX; "Sullivan County News in Review," a 15 minute weekly summary of Sullivan County news; "People Who Make a Difference," an approximately three-minute program spotlighting community minded volunteers in the Sullivan County area; "Congressional Update," a weekly report from Congressman Ben Gilman of New York's 20th District about events in Congress that impact Sullivan County listeners; and "Northeast Neighbors," a five minute religious program addressing religious issues in both Sullivan and Bergen Counties. WJUX also broadcasts advertising for local Monticello advertisers.

In addition to these programs, the translators have relayed other WJUX programming dealing with issues of interest to all communities, and particularly of interest to suburban communities. Such programs include "Mind Your Legal Manners," a half-hour program broadcast for the past two years that focuses on legal issues, and "Eye on Health," a half-hour call-in program dealing with health issues, as well as other programs dealing with important general issues such as the environment, sexual discrimination, labor and other issues generally affecting suburban communities.

I declare under penalty of perjury that the foregoing is
true and correct.



Gerard A. Turro

June 19, 1996
(Date)

Attachment B

DECLARATION OF STEPHEN M. GANSLER

I am the proposed trustee of the Gerard A. Turro Trust, the proposed assignee of the licenses for FM translator stations W276AQ, Fort Lee, New Jersey, and W232AL, Pomona, New York.

I am a licensed attorney but do not presently practice law. I am currently employed as Vice-President, Human Resources, for Johnson & Johnson Health Care Systems, Inc. at its Piscataway, New Jersey location. I have no business or family relationship with Gerard A. Turro, although I have known Mr. Turro for many years.

I understand that, as trustee, I will not be permitted to communicate with Mr. Turro about the operations of the translators and that he will not be permitted to communicate with me. I understand also that I will have complete and sole discretion, subject to compliance with FCC requirements, to decide which station or stations the translator stations rebroadcast. I hereby affirm that I will comply fully with these

trust provisions, and that I will take such other steps as may be required by the FCC so that the trust operations are consistent with FCC rules and policies.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Stephen M. Gansler
Stephen M. Gansler

6/19/96
(Date)